

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the Denial of the
Application of Diane Gilmer to Provide
Family Child Care

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above-matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 23, 2003 at the Office of Administrative Hearings in Minneapolis. The record closed on the date of the hearing.

Vicki Vial-Taylor, Assistant County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, Minnesota 55415, appeared on behalf of the Hennepin County Children, Family, and Adult Services Department and the Department of Human Services. Diane Gilmer appeared for herself without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

Did Diane Gilmer knowingly withhold relevant information from or give false or misleading information to the commissioner in connection with her application for a child care license?

The Administrative Law Judge concludes that Ms. Gilmer knowingly withheld relevant information concerning her household membership and that the denial of her license should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Joyce Gilmer resides at 3350 Dupont Avenue North in Minneapolis. She is a single mother of three children: Schreka Nicholson, now 18 years old; Melvin Battle, Jr., now 13 years old; and DeAngelo Gilmer, now 13 years old. She had a long-term relationship with Melvin Battle, Sr., which began in 1989. Ms. Gilmer also has a large extended family.

2. From 1995 until 1999, Ms. Gilmer was licensed to provide foster care. On May 10, 1999, her license to provide foster care was indefinitely suspended because a household member, Melvin Battle, Sr., was chemically dependent, had gone through treatment but continued to use alcohol, and had failed to verify 12 months of abstinence.^[1]

3. On July 21, 1999, Ms. Gilmer filed her first child care licensing application with Hennepin County.^[2] On January 19, 2000, the Commissioner of Human Services issued an order denying her application on the basis that Melvin Battle, Sr., continued to reside in her home, had recently been convicted of aggravated DWI, and consequently could not verify 12 months of abstinence.^[3]

4. Ms. Gilmer parted company with Melvin Battle, Sr., sometime in early 2002. He left some of his belongings in her home until the end of February 2002, when he removed them permanently. Mr. Battle continued to visit Ms. Gilmer's home in order to see his son.^[4] He also continued to receive mail there and to enter the home at will and without knocking or seeking permission to enter.^[5]

5. On January 22, 2002, Ms. Gilmer filed her second child care licensing application.^[6] On this application she listed herself and her three children as household members. The licensing worker provided Ms. Gilmer with the necessary paperwork to complete (concerning background studies, child care plans, preparation of her home to comply with licensing rules, etc.) before another meeting could be scheduled that would prepare applicants for a home visit. Ms. Gilmer failed to return the paperwork, and the application file was closed.^[7]

6. In June of 2002, Ms. Gilmer began dating Roosevelt Pargo, who lived at 1220 Morgan Avenue North in Minneapolis. As their relationship developed, Mr. Pargo began spending more time at Ms. Gilmer's home during the evenings after work.^[8] Ms. Gilmer requested that Mr. Battle stop entering the home without permission, which in turn generated some conflict with Mr. Battle.

7. In approximately September 2002, Ms. Gilmer contacted licensing authorities seeking to reopen her application for a child care license. A licensing worker, David Dubke, brought a third application to Ms. Gilmer's home on September 3, 2003. She completed the application in his presence, listing herself and her two sons, but not her daughter, as household members. She informed Mr. Dubke that Mr. Battle no longer lived in the home, and Mr. Dubke requested that she obtain Mr. Battle's address so that his residence could be verified. Ms. Gilmer did so, and by the end of September, Mr. Dubke had verified that Mr. Battle lived at 2638 Morgan Avenue North in Minneapolis and had lived there since February 2002.^[9]

8. On October 15, 2002, Ms. Gilmer filed a petition for an Order for Protection, seeking to restrain Mr. Battle from having contact with her or entering her home. In her petition she alleged that Mr. Battle had slashed the tires on the car of a male friend, presumably Mr. Pargo, and attempted to slash the tires of her cousin's car outside her home.^[10] When he learned of the petition for the protective order, Mr. Battle told Ms. Gilmer that he intended to "get back at her" by interfering with her application for a child care license.

9. On October 16, 2002, Mr. Battle contacted David Dubke and informed him that there were "lots of other people living in the home" with Ms. Gilmer and "they had worse records than he had." He stated that Roosevelt Pargo lived there as well as Jennifer Gilmer, age 40; Jennifer's son Lorenzo, age 14; Joyce Gilmer, age 25; and Mequita Nikerson, age 20.^[11]

10. Mr. Dubke was able to learn from economic assistance records that the following persons had claimed to be living at 3350 Dupont Avenue North: Jennifer and Lorenzo Gilmer; and David and Janice Gilmer.^[12]

11. On November 12, 2002, Mr. Dubke called Ms. Gilmer and asked her if there had been any changes in the household since she signed the application on September 3, 2002. She denied any changes and informed Mr. Dubke that she lived there with her three children, including her daughter. When she was asked about Jennifer and Lorenzo Gilmer, she said they had lived with another cousin since May, but they used her address (3350 Dupont Avenue North) as a mailing address. She told him that David and Janice Gilmer lived in Louisiana and had visited seven to eight months earlier but had never lived in her home before returning to Louisiana.

12. On December 9, 2002, Mr. Dubke obtained more information from economic assistance records. He learned that on October 3, 2002, Jennifer Gilmer

appeared at the economic assistance office and provided a Minnesota I.D. card with the address 3350 Dupont Avenue North as verification of her residence. The economic assistance worker was not certain whether David and Janice Gilmer lived there because they were not eligible for assistance.^[13]

13. Roosevelt Pargo did not live in Diane Gilmer's home on September 3, 2002. He did not move there until March 2003.^[14]

14. David and Janice Gilmer did not live in Ms. Gilmer's home at any time.^[15] They may have used her address as their mailing address before returning to Louisiana in the spring of 2002.

15. Jennifer Gilmer and Lorenzo Gilmer were essentially homeless beginning in the spring of 2002 and thereafter lived in the homes of various relatives, including Diane Gilmer, through March 2003.^[16] In addition, Ms. Gilmer allowed Jennifer Gilmer to use Ms. Gilmer's address as her mailing address.^[17]

16. Jennifer Gilmer, who has lived at 920 Oliver Avenue North in Minneapolis since March 2003, did not testify at the hearing.

Procedural Findings

17. On April 22, 2003, Hennepin County recommended denial of Ms. Gilmer's application for a child care license on the basis that she provided false information on the licensing application in violation of Minn. R. 9543.0100, subp. 3C.^[18]

18. On July 10, 2003, the commissioner denied the license application.^[19]

19. On July 20, 2003, Ms. Gilmer appealed the denial of the license and requested a hearing.^[20]

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § § 14.50 and 245A.08.

2. The Department of Human Services gave proper and timely notice of the hearing in this matter.

3. The Department and Hennepin County have complied with all substantive and procedural requirements of law and rule.

4. The commissioner may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license or during an investigation.^[21]

5. At a hearing on denial of an application, the applicant bears the burden of proof to demonstrate by a preponderance of the evidence that the applicant has complied fully with chapter 245A or other applicable law or rule and that the application should be approved and a license granted.^[22]

6. Ms. Gilmer knowingly withheld from the commissioner relevant information about her household membership in connection with her application for a day care license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the commissioner's order denying Ms. Gilmer's application for a day care license be affirmed.

Dated this 30th day of September, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY

Administrative Law Judge

Reported: Taped (one tape)

MEMORANDUM

The Administrative Law Judge has credited Diane Gilmer's testimony concerning the residence of David and Janice Gilmer because it was supported by the testimony of her cousin, Sylvester Gilmer, and because it is consistent with other evidence. For example, when Melvin Battle, Sr., called Mr. Dubke in October 2002 to inform him about others living in the home, he never claimed that either David or Janice Gilmer were living there. His claim was that Jennifer Gilmer and her son Lorenzo were there, along with two other persons whose identity was not established in the record.^[23]

The Administrative Law Judge cannot fully credit Diane Gilmer's testimony that Jennifer Gilmer did not reside in her home after June of 2002, because Ms. Gilmer also said that even after June 2002, when Jennifer Gilmer and her son were mainly staying with other cousins named Tamara and Gary Gilmer, Jennifer and Lorenzo continued to float from the home of one (unspecified) relative to another in order to give the

sheltering household a break. In addition, Ms. Gilmer testified that she was close to Jennifer Gilmer, that Jennifer Gilmer often came to visit, and that her son frequently stayed overnight there. Ms. Gilmer did not call Jennifer Gilmer as a witness in the hearing. Furthermore, in October 2002 Jennifer Gilmer presented economic assistance workers with a Minnesota identification card containing Ms. Gilmer's address.

Taken together with the evidence that Roosevelt Pargo moved into Ms. Gilmer's home at the same time that Jennifer Gilmer finally moved into an apartment of her own, the Administrative Law Judge must conclude that Ms. Gilmer knowingly withheld relevant information about Jennifer and Lorenzo Gilmer's presence in her home when contacted by Mr. Dubke for an explanation in November 2002. Although there may be no easy answer to the question where a homeless person resides, the record establishes that Jennifer Gilmer and her son had enough of a presence in Ms. Gilmer's home that Ms. Gilmer should have disclosed it and fully explained the circumstances instead of simply telling Mr. Dubke that Jennifer Gilmer and her son lived elsewhere.

K.D.S.

^[1] Ex. 9.

^[2] *Id.*

^[3] *Id.*

^[4] Testimony of Diane Gilmer.

^[5] *Id.*

^[6] Ex. 1.

^[7] Testimony of David Dubke.

^[8] Testimony of Roosevelt Pargo.

^[9] Testimony of David Dubke; Ex. 4.

^[10] Ex. 8.

^[11] Testimony of David Dubke; Ex. 4. Jennifer Gilmer is Diane Gilmer's adult cousin. There is no evidence in the record as to who Joyce Gilmer or Mequita Nikerson are.

^[12] David Gilmer is also Diane Gilmer's adult cousin; he is the brother of Jennifer Gilmer. Janice Gilmer is David Gilmer's wife.

^[13] Ex. 5.

^[14] Testimony of Roosevelt Pargo.

^[15] Testimony of Sylvester Gilmer; Testimony of Diane Gilmer.

^[16] Testimony of Diane Gilmer.

^[17] *Id.*

^[18] Ex. 6. The rule in question, Minn. R. 9543.0100, subp. 3C, applies when a *license holder* is subsequently determined to have made false statements in the license application. The commissioner did not rely on this rule, but instead relied properly on the provisions of Minn. Stat. § 245A.05, which provides the basis for denying a license based on statements made by an applicant.

^[19] Ex. 7.

^[20] Ex. 8.

^[21] Minn. Stat. § 245A.05.

^[22] Minn. Stat. § 245A.08, subd. 3(b).

^[23] The Commissioner's denial of the license application was based on information in the economic assistance records indicating that Jennifer, Lorenzo, David, and Janice Gilmer had provided Ms. Gilmer's address as their residence, not on the alleged presence of Mr. Pargo, Joyce Gilmer, or Maquita Nikerson in her home.